

7/786131

JCO3 Rec'd PCT/PTO

18 JAN 2002

#2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PCT UNITED STATES ELECTED OFFICE

ATTY.'S DOCKET: HALID=1

In re Application of:	)	Art Unit:
	)	
Michael HALID	)	Examiner:
	)	
Appln. No.:	)	Washington, D.C.
Nationalized: March 1, 2001	)	
	)	
I.A. No.: PCT/CH00/00354	)	January 18, 2002
I.A. Date: June 30, 2000	)	
	)	
For: PROTECTIVE UNDERPANTS...	)	PCT BRANCH

(1) REQUEST TO CORRECT PTO PAPERS  
OR  
PETITION UNDER 37 C.F.R. 1.182 IN LIEU THEREOF  
AND  
(2) REQUEST FOR FORWARDING OF NOTIFICATION OF MISSING  
REQUIREMENTS

Honorable Commissioner for Patents  
Washington, D.C. 20231

Sir:

It has been discovered that when entering the U.S. National Stage of the present application on March 1, 2001, the transmittal letter (form PTO 1390) to the PTO incorrectly identified the PCT application number as PCT/CH99/00366, and not the correct PCT/CH00/00354, although all other documents filed therewith contained the correct PCT application number and the form PTO 1390 also contained other correct identifying indicia.

**ACTION REQUESTED**

Applicant requests (1) correction of the transmittal letter filed March 1, 2001, to reflect the correct PCT application number **PCT/CH00/00354**, and (2) processing of such application including forwarding of the Notification of Missing Requirements to undersigned on behalf of applicant so that the filing of this application can be completed and the application can be passed to an appropriate Examiner for examination.

**ATTACHMENT**

For convenience, attached hereto is a copy of the transmittal letter filed March 1, 2001, freshly re-signed, in which the PCT application number has been corrected in blue pen, so that the corrected number appears with a line being drawn in blue pen through the incorrect number. Also attached is a postcard receipt from the PTO showing that the papers filed for this application were received in the PTO on March 1, 2001.

Also attached is a copy of a paper filed November 1, 2001, again with the wrong PCT application number entitled "Late Submission Of Declaration And/Or Translation In Application Filed Under 35 USC §371", indicating that we had **not** received any Notification of Missing Requirements, and attaching thereto an executed Declaration in compliance with

37 CFR 1.63. Also attached is a copy of such Declaration which also refers to the wrong PCT number.

**THE FACTS**

In July, 2001, shortly after discovery of the error, a call was placed to the PTO to request how the error could be corrected. A second call was placed on July 5, 2001, at which time we were referred to Ms. Phyllis Lawrence. A call was placed to Ms. Lawrence on July 5 and a voicemail message was left for her. Some time thereafter, Ms. Lawrence advised that she thought that we would need to file a corrected transmittal with a letter explaining what happened and why, but Ms. Lawrence said she would need to check the file and that she would call back with more definitive instructions. Attempts were made to reach Ms. Lawrence on August 5, August 15, and again in September and October, but contact was not made.

In early November, 2001, the file was removed from the desk of the person in our office who had been attempting to determine how to solve the incorrect PCT identification problem, as explained immediately above. At that time, a clerk in our office prepared the aforementioned document entitled "Late Submission Of Declaration ... Filed Under 35 USC §371" without notification of missing requirements having been received, and the declaration and such paper were filed on November 1, 2001.

In December 2001, the aforementioned errors were rediscovered. The PTO was then called again, this time the call being placed to Mr. Jeremy Flemming, who advised that he would look into the matter. Mr. Flemming advised that he thought, because the papers had been timely filed and we did have a postcard receipt with the correct inventor's name on it, the matter could be resolved such as by filing a petition under 37 CFR 1.182 stating that the papers were inadvertently misdirected to the wrong application, and requesting that they be entered into the correct application. Mr. Flemming indicated that he would check the wrong application file, i.e. PCT/CH 99/00366, which corresponds to application 09/509,999, and would provide more advice at that time. Another telephone conference was had with Mr. Flemming the week between Christmas and New Year's, at which time Mr. Flemming advised the filing of the present paper.

**ADDITIONAL REMARKS**

Applicant filed the initial papers necessary to enter the U.S. National stage, in a timely fashion, on March 1, 2001. The aforementioned and attached xerographic copy of the return postcard receipt date stamped by the PTO evidences such timely filing as per MPEP § 503.

It is respectfully noted that all other indicia on the papers filed on March 1, 2001, including the inventor's

name, the International filing date, the title of the invention and the claimed priority date were correct on the transmittal letter form (corrected copy attached), on the form PTO-1390, and on the attachments including the first page (cover page) of International publication WO01/01911 A1. Also, the correct application number was on the specification and on the first page of the international publication, copies of which were filed with the transmittal letter (form PTO 1390) on March 1, 2001.

MPEP § 502 contemplates that papers are sometimes filed with an incorrect application number, and the PTO has mechanisms in place to deal with such problems. Thus, MPEP Section 502 states in part as follows (August 2001 edition, page 500-6):

A minor error in the identification of the application can be corrected by the group provided the correct identification can be quickly discovered.

Applicant gave a number on the form PTO 1390, but it was incorrect, although other identifying indicia were present as indicated above, as was the correct number on other papers filed therewith. This is believed to be a minor error in view of the fact that all other indicia of identification were correct.

With all such correct indicia of identification, applicant believes that the correct application number could

have been quickly discovered and thus corrected by the group as indicated in MPEP § 502.

MPEP § 502 further states as follows with regard to errors in the application number:

Frequently, there are errors in the application number... .

....

Where such papers [not containing sufficient identification] are not essential to compliance with a statutory period or time limit for reply, they may be returned for completion to identify the location of the files. [bracketed material added]

In the present case, the papers filed were absolutely necessary as a term was running. It would seem that the PTO clerk who may have merely deposited such papers and payment in the wrong file (if indeed, this happened) should have at least informed applicant of the error in the International application number.

Even though a minor error appeared in the transmittal form PTO-1390 and all the other information was correct, the PTO should have easily been able to associate such transmittal and filing fee payment with the present application.

It is believed that the present situation is also covered by the decision of the Federal Circuit in *Helfgott & Karas P.C. v. Dickinson*, 54 USPQ2d 1425 (Fed Cir 2000), which involved the filing of a demand which contained the wrong

application serial number. In ruling in favor of the applicant, the court stated (54 USPQ2d at 1431):

Applicants whom mistakenly transpose digits in the application number placed on file documents would be at risk that the Commissioner would adopt the wooden position he takes here: that the application number cannot later be changed, ..., because the erroneous document appears to relate to another application. This we cannot allow. ... The Commissioner 's refusal to accept these changes was legally incorrect.

Although applicant's PCT number was incorrect in the transmittal letter (only in the transmittal letter), the papers in their entirety including all other indicia correctly identified the International application in question.

In view of the above evidence of the date stamped postcard receipt, it is clear that applicant timely entered the U.S. National stage on March 1, 2001, as MPEP 503 states:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of the receipt in the USPTO of all items listed thereon on the date stamped thereon by the PTO.

Applicant's request made above should therefore be granted.

As it appears that the original papers filed on March 1, 2001, may have been misplaced by and within the PTO, attached hereto is the aforementioned duplicate copy of all the papers filed on that date, freshly re-signed as indicated

In re of Appln. No. PCT/CH00/00354

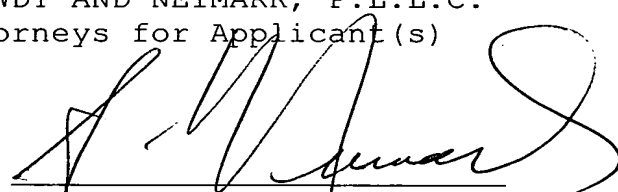
above, and wherein the transmittal letter bears the corrected  
PCT number in blue ink.

If any fee is due, e.g. a petition fee, please  
charge same to deposit account 02-4035.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By

  
Sheridan Neimark  
Registration No. 20,520

SN:jaa/edg  
Telephone No.: (202) 628-5197  
Facsimile No.: (202) 737-3528  
F:\,K\Kulh\Halid 1\PTO\Requ Pet 182.doc





FILED: March 1, 2001

APPLICANT(S): Michael HALID

THIS PATENT AND TRADEMARK OFFICE STAMP HEREON  
ACKNOWLEDGES RECEIPT OF THE ABOVE-IDENTIFIED  
APPLICATION, INCLUDING THE FOLLOWING PAPERS:

☒ FEES \$ 565.00 <sup>695.00</sup> (CH. # P70-2038)

☐ PCT APPLICATION

☒ TRANSMITTAL LETTER REQUEST

☒ FEE CALCULATION SHEET

☒ SPECIFICATION ( \_\_\_\_\_ pages)

☒ DRAWINGS ( \_\_\_\_\_ sheets; \_\_\_\_\_ figures)

☐ SEQUENCE LISTING ☐ WITH DISK

☒ APPOINTMENT OF AGENT

☒ INVITATION TO CORRECT DEFECTS

☒ REQUEST FOR RECTIFICATION

☐ DEMAND FOR CHAPTER II

☒ ARTICLE 34 AMENDMENTS

☐ RESPONSE TO WRITTEN OPINION

☒ U.S. NATIONAL PHASE OF INTERNATIONAL APPLICATION

☒ TRANSMITTAL LETTER

☒ DECLARATION ( \_\_\_\_\_ pages)

☐ SMALL ENTITY STATEMENT(S) ( \_\_\_\_\_ pages)

☐ PRELIMINARY AMENDMENT

☐ OTHER \_\_\_\_\_

DOCKET NO. HALID 1

BASED ON: PCT/CH99/00366

1 of 2



☐ SUPPLEMENTAL PRELIMINARY AMENDMENT

☐ INFORMATION DISCLOSURE STATEMENT ( \_\_\_\_\_ pages)

☐ FORM 1449 ( \_\_\_\_\_ pages)

☐ PATENTS AND/OR PRINTED PUBLICATIONS

☐ SEQUENCE LISTING ☐ WITH DISK

☒ COURTESY COPY

☒ SPECIFICATION ( 21 pages)

☒ DRAWINGS ( 6 sheets; 1-18 figures)

☒ 1ST. PAGE INTERNATIONAL PUBLICATION

☒ INTERNATIONAL SEARCH REPORT

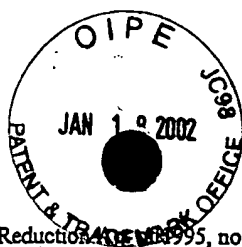
☐ IPER ☐ WITH ☐ WITHOUT ANNEXES

☐ ENGLISH LANGUAGE TRANS OF SPECIFICATION AS FILED

☐ ENGLISH LANGUAGE TRANS OF ANNEXES TO IPER

☐ SUBSTITUTE SPECIFICATION

INITIALS: WRD



PTO-2038 (02-2000)

Approved for use through 01/31/2003. OMB 0651-0043

United States Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**Service Charge:** There is a 50.00 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21(m)).

**Credit Card Billing Address****Street Address 1:** 624 Ninth Street, NW**Street Address 2:****City:** Washington**State:** DC**Zip/Postal Code:** 20001**Country:** USA**Daytime Phone #:** 202-628-5197**Fax #:** 202-737-3528**Request and Payment Information****Description of Request and Payment Information:***Filing Fee*

Patent Fee	Patent Maintenance Fee	Trademark Fee	Other Fee
Application No.	Application No.	Serial No.	IDON Customer No.
Patent No.	Patent No.	Registration No.	
Attorney Docket No.		Identify or Describe Mark	
HALID 1.			

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HALID 1

**TRANSMITTAL LETTER TO THE UNITED STATES  
DESIGNATED/ELECTED OFFICE (DO/EO/US)  
CONCERNING A FILING UNDER 35 U.S.C. 371**

U.S. APPLICATION NO. (If known, see 37 CFR 1.5)

INTERNATIONAL APPLICATION NO.

~~PCT/GH99/00366~~

PCT/CH00/00364

INTERNATIONAL FILING DATE

30 June 2000

PRIORITY CLAIMED

01 July 1999

TITLE OF INVENTION

**PROTECTIVE UNDERPANTS AND METHOD FOR PRODUCING THE SAME**

APPLICANT(S) FOR DO/EO/US

**Michael HALID**

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. ☒ This is a **FIRST** submission of items concerning a filing under 35 U.S.C. 371.
2. ☐ This is a **SECOND** or **SUBSEQUENT** submission of items concerning a filing under 35 U.S.C. 371.
3. ☒ This is an express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371(b) and PCT Articles 22 and 39(1).
4. ☐ The US has been elected in a Demand by the expiration of 19 months from the priority date (PCT Article 31).
5. ☒ A copy of the International Application as filed (35 U.S.C. 371(c)(2))
  - a. ☐ is attached hereto (required only if not transmitted by the International Bureau).
  - b. ☒ has been communicated by the International Bureau.
  - c. ☐ is not required, as the application was filed in the United States Receiving Office (RO/US).
6. ☐ An English language translation of the International Application as filed (35 U.S.C. 371(c)(2)).
7. ☒ Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371(c)(3))
  - a. ☐ are transmitted herewith (required only if not transmitted by the International Bureau).
  - b. ☐ have been communicated by the International Bureau.
  - c. ☐ have not been made; however, the time limit for making such amendments has NOT expired.
  - d. ☒ have not been made and will not be made.
8. ☐ An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).
9. ☐ An oath or declaration of the inventor(s) (35 U.S.C. 371(c)(4)).
10. ☐ An English language translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371(c)(5)).

Items 11. to 16. below concern document(s) or information included:

11. ☐ An Information Disclosure Statement under 37 CFR 1.97 and 1.98.
12. ☐ An Assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
13. ☐ A **FIRST** preliminary amendment.  
☐ A **SECOND** or **SUBSEQUENT** preliminary amendment.
14. ☐ A substitute specification.
15. ☐ A change of power of attorney and/or address letter.
16. ☒ Other items or information:
  - ☒ Courtesy copy of the first page of the International Publication (WO 01/01911).
  - ☒ Courtesy copy of the International Application as originally filed.
  - ☒ Courtesy copy of the International Search Report.

U.S. APPLICATION NO. (If known, see 37 CFR 1.5)	International Application No. <b>PCT/CH99/00366</b>	Attorney's Docket No. <b>HALID 1</b>
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17. [xx] The following fees are submitted:

**BASIC NATIONAL FEE (37 CFR 1.492 (a)(1) –(5):**  
 Neither international preliminary examination fee (37 CFR 1.482)  
 nor international search fee (37 CFR 1.445(a)(2)) paid to USPTO  
 and International Search Report not prepared by the EPO or JPO.....**\$1000.00**

International preliminary examination fee (37 CFR 1.482) not paid to  
 USPTO but International Search Report prepared by the EPO or JPO.....**\$860.00**

International preliminary examination fee (37 CFR 1.482) not paid to USPTO but  
 international search fee (37 CFR 1.445(a)(2)) paid to USPTO.....**\$710.00**

International preliminary examination fee paid to USPTO (37 CFR 1.482)  
 but all claims did not satisfy provisions of PCT Article 33(1)-(4).....**\$690.00**

International preliminary examination fee paid to USPTO (37 CFR 1.482)  
 and all claims satisfied provisions of PCT Article 33(1)-(4).....**\$100.00**

**ENTER APPROPRIATE BASIC FEE AMOUNT =**

Surcharge of \$130.00 for furnishing the oath or declaration later than [X] 20 [ ] 30  
 months from the earliest claimed priority date (37 CFR 1.492(e)).

Claims as Originally Presented	Number Filed	Number Extra	Rate		
Total Claims	- 20		X \$18.00	\$	
Independent Claims	- 3		X \$80.00	\$	
Multiple Dependent Claims (if applicable)			+\$270.00	\$	

**TOTAL OF ABOVE CALCULATIONS =**

Claims After Post Filing Prel. Amend	Number Filed	Number Extra	Rate		
Total Claims	- 20		X \$18.00	\$	
Independent Claims	- 3		X \$78.00	\$	

**TOTAL OF ABOVE CALCULATIONS =**

Reduction of ¼ for filing by small entity, if applicable. Applicant claims small entity  
 status. See 37 CFR 1.27.

**SUBTOTAL =**

Processing fee of \$130.00 for furnishing the English translation later than [X] 20 [ ] 30  
 months from the earliest claimed priority date (37 CFR 1.492(f)).

**TOTAL NATIONAL FEE =**

Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be  
 accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property +

**TOTAL FEES ENCLOSED =**

	Amount to be:	\$
	refunded	
	charged	\$

**CALCULATIONS PTO USE ONLY**

a. [ ] A check in the amount of \$ \_\_\_\_\_ to cover the above fees is enclosed.

b. [X] Credit Card Payment Form (PTO-2038), authorizing payment in the amount of \$ 695.00, is attached.

c. [ ] Please charge my Deposit Account No. 02-4035 in the amount of \$ \_\_\_\_\_ to cover the above fees.  
 A duplicate copy of this sheet is enclosed.

d. [XX] The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment  
 to Deposit Account No. 02-4035. A duplicate copy of this sheet is enclosed.

**NOTE:** Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or  
 (b)) must be filed and granted to restore the application to pending status.

SEND ALL CORRESPONDENCE TO:

**BROWDY AND NEIMARK, P.L.L.C.**  
 624 NINTH STREET, N.W., SUITE 300  
 WASHINGTON, D.C. 20001  
 TEL: (202) 628-5197  
 FAX: (202) 737-3528  
 Date of this submission: **March 1, 2001**

SIGNATURE  
Roger L. Browdy  
 NAME  
25,618  
 REGISTRATION NUMBER

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: ) Application Division  
 HALID, Michael ) ATTN: PCT  
 Serial No.: PCT/CH99/00366- ) Washington, D.C.  
 Filing Date: March 1, 2001 ) Confirmation No.  
 For: Protective Pants And Method.. ) November 1, 2001

LATE SUBMISSION OF DECLARATION AND/OR TRANSLATION IN APPLICATION FILED UNDER 35 USC  
\$371

HON. COMMISSIONER OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20231

Sir:

NO "NOTIFICATION OF MISSING REQUIREMENTS..." has been received by applicant.

- [XX] Attached hereto is an executed oath or declaration in compliance with 37 C.F.R. 1.63, identifying the present application by title, PCT information and priority information.
- [ ] Applicant claims small entity status. See CR 1.27.
- [ ] Preliminary Amendment and Statements in Support of Filing and Submissions in Accordance with 37 C.F.R. §1.821-1.825, Sequence Listing (hardcopy), and computer-readable form of Sequence Listing.
- [ ] An Information Disclosure Statement with 1449 and references is also attached.
- [ ] A Preliminary Amendment
- [ ] An exact English language translation of the PCT application as originally filed.
- [ ] Other documents: \_\_\_\_\_
- [ ] Surcharge for late filing of English translation \$ 130.00
- [ ] Surcharge for late filing of the Declaration was paid on \_\_\_\_\_
- [ ] Surcharge for late filing of the Declaration in the amount of:
- |              |                         |
|--------------|-------------------------|
| Small Entity | Other than Small Entity |
| [ ] \$65.00  | [ ] \$130.00            |
- [ ] It is hereby petitioned for an extension of time in accordance with 37 C.F.R. 1.136(a). The appropriate fee required by 37 C.F.R. 1.17 is calculated as shown below:
- |                             |                             |
|-----------------------------|-----------------------------|
| Small Entity                | Other Than Small Entity     |
| Response Filed Within       | Response Filed Within       |
| [ ] First - \$ 55.00        | [ ] First - \$ 110.00       |
| [ ] Second - \$ 200.00      | [ ] Second - \$ 400.00      |
| [ ] Third - \$ 460.00       | [ ] Third - \$ 920.00       |
| [ ] Fourth - \$ 720.00      | [ ] Fourth - \$1,440.00     |
| Month After Time Period Set | Month After Time Period Set |

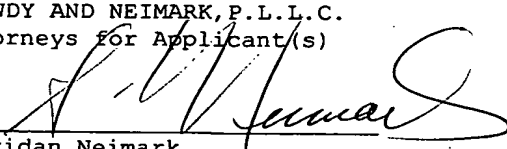
[XX] Conditional Petition for Extension of Time:

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

- [ ] Credit Card Payment Form, PTO-2038, authorizing payment the amount of \$ \_\_\_\_\_ enclosed to cover the above fees.
- [XX] The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR 1.16 and all patent processing fees under 37 CFR 1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR 1.18.

BROWDY AND NEIMARK, P.L.L.C.  
 Attorneys for Applicant(s)

(202) 628-5197

By:   
 Sheridan Neimark  
 Registration No. 20,520

SN:tw